

By: Ellis, et al.

S.B. No. 961

Substitute the following for S.B. No. 961:

By: Eiland

C.S.S.B. No. 961

A BILL TO BE ENTITLED

AN ACT

relating to the sale of certain annuities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 102.001, Insurance Code, is amended by amending Subdivision (1) and adding Subdivision (3) to read as follows:

(1) "Charitable gift annuity" means an annuity:

(A) that is payable over the lives of one or two individuals;

(B) that is made in return for the transfer of cash or other property to a charitable organization or qualified educational organization; and

(C) the actuarial value of which is less than the value of the cash or other property transferred, with the difference in those values being a charitable deduction for federal tax purposes.

(3) "Qualified educational organization" means an issuer of a charitable gift annuity that is:

(A) an institution of higher education as defined by Section 61.003, Education Code;

(B) a private or independent institution of higher education as defined by Section 61.003, Education Code; or

(C) a foundation designated in writing by an institution described by Paragraph (A) or (B) to issue charitable

1 gift annuities for the benefit of the institution.

2 SECTION 2. Section 102.002, Insurance Code, is amended to
3 read as follows:

4 Sec. 102.002. QUALIFIED CHARITABLE GIFT ANNUITY. (a) A
5 charitable gift annuity is a qualified charitable gift annuity for
6 purposes of this chapter if it was issued before September 1, 1995,
7 or if it is:

8 (1) described by Section 501(m)(5), Internal Revenue
9 Code of 1986; and

10 (2) issued by a charitable organization that on the
11 date of the annuity agreement:

12 (A) has, exclusive of the assets funding the
13 annuity agreement, a minimum of \$300,000 [~~\$100,000~~] in unrestricted
14 cash, cash equivalents, or publicly traded securities; and

15 (B) has been in continuous operation for at least
16 three years or is a successor or affiliate of a charitable
17 organization that has been in continuous operation for at least
18 three years.

19 (b) A charitable gift annuity is a qualified charitable gift
20 annuity if it is issued by a qualified educational organization
21 that, on the date of the annuity agreement:

22 (1) has, exclusive of the assets funding the annuity
23 agreement, a minimum of \$300,000 in unrestricted cash, cash
24 equivalents, or publicly traded securities; and

25 (2) has been in continuous operation for at least
26 three years or is a successor or affiliate of an institution or
27 foundation described by Section 102.001(3) that has been in

1 continuous operation for at least three years.

2 SECTION 3. Subchapter C, Chapter 102, Insurance Code, is
3 amended by amending Section 102.102 and adding Section 102.105 to
4 read as follows:

5 Sec. 102.102. NOTICE AND APPROVAL OF QUALIFIED STATUS OF
6 CHARITABLE ORGANIZATION [~~TO DEPARTMENT~~]. (a) Not later than the
7 60th day before the date on which a charitable organization sells
8 the organization's first qualified charitable gift annuity, the [A]
9 charitable organization [~~that issues qualified charitable gift~~
10 ~~annuities~~] shall:

11 (1) notify the department's annuities division in
12 writing of the organization's intention to issue a charitable gift
13 annuity; and

14 (2) request in writing the department's approval of
15 the organization as a qualified charitable organization under this
16 chapter [~~not later than the date on which the organization enters~~
17 ~~into the organization's first qualified charitable gift annuity~~
18 ~~agreement~~].

19 (b) The notice required by this section must:

20 (1) be signed by an officer or director of the
21 organization;

22 (2) identify the organization; [~~and~~]

23 (3) certify that:

24 (A) the organization is a charitable
25 organization; and

26 (B) the annuities issued by the organization are
27 [~~qualified~~] charitable gift annuities; and

1 (4) be submitted in a form and manner adopted by the
2 commissioner by rule under Subsection (c).

3 (c) The commissioner may adopt rules that establish the form
4 and manner of information that a charitable organization must [~~may~~
5 ~~not be required to~~] submit to request approval under this section
6 [additional information except to determine appropriate penalties
7 under Section 102.104].

8 (d) On receipt of notice and request for approval under this
9 section, the department may:

10 (1) approve a request for a charitable organization to
11 issue charitable gift annuities; or

12 (2) disapprove a request and notify the issuer in
13 writing of the grounds for the disapproval in sufficient detail to
14 allow remediation.

15 (e) A request under Subsection (b) is considered approved if
16 the commissioner does not act on the request on or before the 60th
17 day after the date the department received the request.

18 (f) The department may withdraw the approval of a request
19 for qualified status of a charitable organization if the
20 organization no longer satisfies the requirements for approval.
21 The department shall notify the organization in writing of the
22 grounds for the withdrawal of approval in sufficient detail to
23 allow remediation.

24 (g) A proceeding under this chapter for the disapproval or
25 withdrawal of approval is a contested case under Chapter 2001,
26 Government Code.

27 Sec. 102.105. NOTICE OF QUALIFIED EDUCATIONAL ORGANIZATION

1 STATUS. (a) Not later than the 60th day before the date on which a
2 qualified educational organization sells the organization's first
3 qualified charitable gift annuity, the organization shall:

4 (1) notify the department's annuities division in
5 writing of the organization's intention to issue a charitable gift
6 annuity; and

7 (2) request in writing the department's acknowledgment
8 of the organization as a qualified educational organization under
9 this chapter.

10 (b) The notice required by this section must:

11 (1) be signed by an officer or director of the
12 organization;

13 (2) identify the organization; and

14 (3) certify that:

15 (A) the organization is an institution of higher
16 education or a private or independent institution of higher
17 education as defined by Section 61.003, Education Code, or a
18 foundation designated by the institution as described by Section
19 102.001(3); and

20 (B) the annuities issued by the organization are
21 charitable gift annuities.

22 (c) On receipt of notice and request for acknowledgment
23 under this section, the department shall acknowledge that the
24 organization may issue a charitable gift annuity.

25 SECTION 4. Section 102.152, Insurance Code, is amended to
26 read as follows:

27 Sec. 102.152. TREATMENT OF ANNUITY AS CHARITABLE GIFT

1 ANNUITY; ESTOPPEL. In any litigation or other proceeding brought
2 by or on behalf of a donor or the donor's heirs or distributees, an
3 annuity that the donor has treated as a charitable gift annuity in a
4 filing with the United States Internal Revenue Service shall be
5 considered to be a qualified charitable gift annuity issued by a
6 charitable organization or a qualified educational organization,
7 as described by Subchapters A and B and Section 101.053(b).

8 SECTION 5. Section 1107.006, Insurance Code, is amended to
9 read as follows:

10 Sec. 1107.006. MATURITY DATE. [~~(a)~~] In determining the
11 value of benefits under Sections 1107.102, 1107.103, and 1107.104,
12 [~~and subject to Subsection (b), if an annuity contract permits an~~
13 ~~election to have annuity payments begin on optional maturity~~
14 ~~dates,~~] the maturity date is [~~considered to be~~] the latest date on
15 which an election is permitted by the contract, but [~~-~~

16 [~~(b) A maturity date determined under this section may~~] not
17 [~~be~~] later than the later of:

18 (1) the next anniversary of the annuity contract that
19 follows the annuitant's 70th birthday; or

20 (2) the 10th anniversary of the contract.

21 SECTION 6. Section 1115.102, Insurance Code, is amended by
22 adding Subsections (c) and (d) to read as follows:

23 (c) In addition to any other remedy available for a
24 violation of this chapter, if the commissioner finds a pattern or
25 practice of unsuitable sales of annuities, or such a pattern or
26 practice is reasonably expected, because of the compensation
27 offered by an insurer for the sale of annuities, the commissioner

1 may, after notice and hearing, order the insurer to cease and desist
2 or modify the compensation offered.

3 (d) An order issued under Subsection (c) may not include a
4 regular salaried officer or employee of a licensed insurer, a
5 jointly managed affiliate of a licensed insurer, or a licensed
6 insurance agent if the officer or employee does not receive a
7 commission or other compensation for the services of the officer or
8 employee that is directly dependent on the amount of business done.

9 SECTION 7. Sections 2 and 3 of this Act apply only to an
10 annuity that is delivered or issued for delivery on or after January
11 1, 2010. An annuity that is delivered or issued for delivery before
12 January 1, 2010, is governed by the law as it existed immediately
13 before the effective date of this Act, and that law is continued in
14 effect for that purpose.

15 SECTION 8. Section 1107.006, Insurance Code, as amended by
16 this Act, applies only to an annuity that is delivered or issued for
17 delivery on or after June 1, 2010. An annuity that is delivered or
18 issued for delivery before June 1, 2010, is governed by the law as
19 it existed immediately before the effective date of this Act, and
20 that law is continued in effect for that purpose.

21 SECTION 9. Section 1115.102, Insurance Code, as amended by
22 this Act, applies only to conduct that occurs on or after the
23 effective date of this Act. Conduct that occurs before the
24 effective date of this Act is covered by the law in effect when the
25 conduct occurred, and the former law is continued in effect for that
26 purpose.

27 SECTION 10. This Act takes effect September 1, 2009.